IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 314 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

INTERNATIONAL STEEL CORPN.

Appearance:

1. INCOME TAX REFERENCE No. 314 of 1993
MR MANISH R BHATT for Petitioner No. 1
MR JP SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 16/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the Revenue, the following questions are referred for our opinion, in respect of the assessment year 1987-88:

"1. Whether, the Appellate Tribunal is right in law and facts in directing the I.T.O. to treat the ship breaking business as industrial undertaking and accordingly directing to allow deduction under section 80HHA and 80 I?

2. Whether, the Appellate Tribunal is right in law and on facts in holding that if the unpaid sale-tax liability pertaining to the last quarter is paid within the time stipulated for filing of return under section 139 (1) the provisions of section 43B cannot be made applicable?"

2. We have heard Mr. M.R. Bhatt, learned Standing Counsel for the revenue and Mr. J.P. Shah, learned counsel for the respondent - assessee.

3. Our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship Breaking Corporation, 2003 (261) ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. Since the provisions of Section 80HH-A are similar, in so far as the controversy involved in the present reference is concerned, we respectfully follow the aforesaid decision and answer the question No.1 in the negative, i.e., in favour of the Revenue and against the assessee.

4. So far as question No.2 is concerned, our attention is drawn to the decision of the Apex Court in Allied Moors (P) Ltd. v. Commissioner of Income-Tax, 224 ITR 677 taking the view that the statutory liability for sales tax actually discharged after the expiry of the accounting year, within the time limit for filing return as per the provisions of relevant statute, is entitled to deduction under Section 43B of the Income-tax Act, 1961.

5. Applying the ratio of the aforesaid decision to the facts of present case, our answer to question No.2 is in the affirmative, i.e., in favour of the assessee and against the revenue.

6. The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)